Wardley Ltd v Tengku Aishah & Ors

HIGH COURT (SINGAPORE) — SUIT NO 1730 OF 1989
KARTHIGESU J
28 FEBRUARY 1991

Banking — Multi-currency loan agreement — Construction of loan agreement — Whether currency of repayment is in Swiss francs or Australian dollars — Whether interest after judgment payable at contractual rate in loan agreement or statutory rate under O 42 r 12 of the Rules of the Supreme Court 1970

Civil Procedure — Interest after judgment — Whether plaintiffs entitled to post-judgment interest at the contractual rate — Whether court is precluded from making such award — Applicability of O 42 r 12 of the Rules of the Supreme Court 1970 — Rules of the Supreme Court 1970, O 42 r 12

Contract — Multi-currency loan agreement — Construction of the loan agreement as to the currency and mode of repayment of the loan

The plaintiffs and defendants were lenders and borrowers respectively under a multi-currency loan agreement. The plaintiffs obtained summary judgment under O 14 of the Rules of the Supreme Court 1970 ('RSC') for Swiss francs 1,744,878,22 being the total principal and interest sums due under the loan agreement, but failed in their application for interest at the agreed rate under the loan agreement. The defendants appealed against the judgment and the plaintiffs cross-appealed, seeking a variation to the judgment that they be awarded interest on the judgment sum at the rate stipulated in the loan agreement and not at the rate of 8% pa under O 42 r 12 of the RSC.

Held, dismissing the defendants' appeal:

(1) The purpose of the loan was to provide financing of the purchase of property by the defendants in Australia. It was to provide 'amount of Eurocurrency which will be required to purchase A$1.16m' and not A$1.16m itself. One of the purposes of the loan agreement was to enable the defendants to take advantage of the shifts in value of currency on the world's money markets and the wording of the loan agreement was designed so that the risk of currency loss or gain is always on the defendants.

(2) The loan was made by the plaintiffs to the defendants in Swiss francs, and it was clear from the construction of cll 3 and 5 of the loan agreement that the loan was to be repaid in Swiss francs and not in Australian dollars.

Held further, allowing the plaintiffs' cross-appeal:

(1) The learned Chief Justice's judgment in *Sim Lim Finance Ltd* v *Pelandok Enterprises Pte Ltd*[1] was a judgment in default of appearance. The distinction between interest on a judgment debt and an award of the covenanted rate of interest within a judgment was not argued and hence the learned Chief Justice proceeded on the assumption that upon judgment, the covenant was not effective to create a right for contractual rates of interest to continue after judgment. The case, therefore, can be distinguished from the instant case.

(2) On the construction of cl 11.4 of the loan agreement, interest at the covenanted rate is payable as a matter of agreement between the plaintiffs and the defendants until actual payment by the defendants.

(3) Order 42 r 12 of the RSC, which refers to a judgment debt, cannot curtail contractual rights as s 80(2)(j) of the Supreme Court of Judicature Act (Cap 322, 1985 Ed) prescribes for O 42 r 12 to apply *unless otherwise agreed between the parties*. The court is thus not precluded from awarding the plaintiffs their claim for post-judgment interest at the contractual rate.

(4) Section 9 of the Civil Law Act (Cap 43, 1988 Ed), which prohibits interest charged upon interest, is inapplicable since the capitalizing of interest or charging of compound interest is contractually provided for in cl 11.4 of the loan agreement.

[*Editorial Note*: The defendants have appealed to the Court of Appeal vide Civil Appeal No 55 of 1991.]

Cases referred to

1 *Sim Lim Finance Ltd* v *Pelandok Enterprises Pte Ltd* [1981] 1 MLJ 280 (distd)
2 *United Overseas Bank Ltd* v *Sin Leong Ironbed and Furniture Manufacturing Co (Pte) Ltd & Ors* [1988] 1 MLJ 479 (folld)
3 *Popple* v *Sylvester* (1882) 22 Ch D 98 (folld)
4 *Ex p Fewings* (1883) 25 Ch D 338 (folld)
5 *Economic Life Assurance Society* v *Usborne & Ors* [1902] AC 147 (folld)
6 *Ealing London Borough Council* v *El Isaac & Anor* [1980] 1 WLR 932; [1980] 2 All ER 548 (folld)
7 *Malaysia Building Society Bhd* v *Lim Kheng Kim & Ors* [1988] 3 MLJ 175 (refd)
8 *National Bank of Greece SA* v *Pinios Shipping Co (No 1) & Anor*; *The Maira* [1990] 1 All ER 78 (refd)

Legislation referred to

Civil Law Act (Cap 43, 1988 Ed) s 9
Supreme Court of Judicature Act (Cap 322, 1985 Ed) s 80(2)(j)
Rules of the Supreme Court 1970 O 42 r 12

Steven Ang for the plaintiffs.
Fong Kwok Jen (*R Chandra* with him) for the defendants.

Cur Adv Vult

Karthigesu J: The plaintiffs' claim in this action is for the principal and interest due to them from the defendants under a loan agreement dated 30 July 1984 (hereinafter referred to as 'the loan agreement'); miscellaneous out-of-pocket expenses; interest on the amounts due under the loan agreement from 12 September 1989 to the date of actual payment (as well after as before judgment) at the rate of 4½% above the rate as determined by the plaintiffs for a deposit of an amount comparable to the said amounts offered to the plaintiffs on the Singapore Interbank Market for such period as the plaintiffs may from time to time select; and costs on a solicitor and client basis.

The loan agreement, commonly referred to as a multi-currency loan agreement, facilitates the drawdown of the loan stated in one currency in another currency of the borrowers' choice, in this case, Eurocurrency, that is to say Swiss Francs, United States dollars or any other currency, deposits of which are for the time being generally available to the plaintiffs in the Singapore Inter-

bank Market, and it further facilitates the borrowers to change the currency in which the loan was drawn down, the currency of account, to another Eurocurrency of the borrowers' choice between the interest periods stated in the loan agreement.

The plaintiffs, having applied for summary judgment under O 14 of the Rules of the Supreme Court 1970 ('RSC'), were given leave to enter final judgment by the senior assistant registrar on 28 March 1990 and judgment was duly entered on 31 March 1990 for Swiss francs 1,744,878.22 (being as to principal of SwF 1,287,617.78 and interest of SwF 457,260.44 both as at 28 March 1990); the sum of S$2,971.96 being the miscellaneous expenses claimed; and costs of the action to be taxed on a solicitor and client basis. The plaintiffs failed in their application for interest at the rate claimed. The award of interest at 8% pa on the judgment from the date of the judgment until payment, they would have got without an order to that effect. See O 42 r 12 of the RSC.

The defendants appealed against the senior assistant registrar's order granting the plaintiffs' judgment and the plaintiffs cross-appealed, seeking a variation to his order that the plaintiffs be awarded interest on the judgment sum (excluding costs) at the contractual rate stipulated in the loan agreement.

On the hearing of the appeal, the defendants confined their arguments to just one ground, namely, the interpretation of cl 5 of the loan agreement which reads as follows:

> 5.1 Subject to the provisions of this agreement, the amount of the loan at the end of the drawing period shall be repaid by four instalments, with one instalment being paid on each of the repayment dates.
>
> 5.2 Each of the first three instalments under cl 5.1 will be in the currency in which the loan is denominated during the interest period ending on the relevant repayment date and of such amount as will reduce the equivalent amount in Australian dollars of the loan on the repayment date (assuming no conversion to another Eurocurrency on that date) according to the following schedule:
>
> | Instalment number | A$ equivalent amount immediately following instalment repayment |
> |---|---|
> | One | 1,110,000 |
> | Two | 1,060,000 |
> | Three | 1,010,000 |
>
> (less in each case the A$ amount of all prepayments made prior to, or to be made on, the relevant repayment date)
>
> The last repayment instalment will be of the whole of the loan then outstanding.

The other principle provisions of the loan agreement which need to be considered in arriving at the true meaning of cl 5 are cll 2.1, 3.2 and the meanings given to the words and expressions used in these clauses by cl 1.1. Clause 2.1 reads as follows:

> The initial maximum principal amount of the facility is the equivalent determined as provided in this agreement of A$1,160,000 (one million one hundred and sixty thousand Australian dollars).

Clause 3.2 reads as follows:

> The drawing will, subject to the provisions of this agreement, be advanced in the Eurocurrency specified in the drawing notice, and will be in the amount in the relevant Eurocurrency, as determined by the bank (plaintiffs), required to purchase A$1,160,000 on the date of drawing. The drawing will be applied in or towards the purchase of Australian dollars for value the anticipated date of completion specified in the drawing notice, or such earlier date after receipt of the drawing notice as the bank (plaintiffs) may select, and pending completion of purchase of the Part I properties, may be held by the bank (plaintiffs) at such bank, in such name and account, and on such terms as to interest and otherwise, as the bank (plaintiffs) thinks fit, and shall be applied at completion in or towards payment of the purchase price of the Part I properties.

The Part I properties are 17 units in Fremantle Malls, Willam Street, Fremantle, Western Australia ('Fremantle Malls').

The relevant words and expressions used in cll 2.1, 3.2 and 5 are given the following meanings ascribed to them by cl 1.1:

Completion	Completion of the purchase of the properties listed in Part I of the Schedule, in each case by the person there named as purchaser thereof.
Drawing	The amount of the drawing in the relevant Eurocurrency made or to be made following the delivery of drawing notice under cl 3.1.
Drawing notice	A notice of drawing substantially in the form set out in the appendix hereto duly completed and signed on behalf of the borrowers (defendants).
Equivalent amount	The amount in one currency converted from the relevant amount in another currency at the spot buying rate for the purchase of the first currency with the second currency at or about 11am Singapore time on the second business day prior to the date as to which such equivalent amount is to be determined for the purposes of this agreement.
Facility	The loan facility, the terms and conditions of which are set out in this agreement.
Interest payment date	The last day of an interest period.
Interest period	The period determined in accordance with cl 4.1, the first interest period commencing on the date of drawing in the relevant Eurocurrency pursuant to cl 3.2 and each subse-

quent interest period commencing on the expiry of the previous one, but so that:

...

(c) the last interest period commencing prior to a repayment date shall be of such duration as expires on that date.

Loan — The aggregate principal amount advanced under the facility and for the time being outstanding.

Repayment dates — The third, fourth, fifth and sixth anniversaries of the date of drawing, or if any such day is not a business day, the next business day thereafter unless falling in another month of the year, in which case the preceding business day.

Even from the limited reference I have made to the loan agreement, its underlying purpose and scheme is clear. The purpose is to finance the defendants in their purchase of Fremantle Malls. The scheme is to provide them a loan of such an amount of a Eurocurrency specified by the defendants, as the plaintiffs shall determine will be required, to purchase A$1.16m which will enable them to complete the purchase of Fremantle Malls. This is abundantly clear simply by reading cl 3.2 alone. It is also more than clear that the loan is not for A$1.16m but for the 'amount of the Eurocurrency which will be required to purchase A$1.16m at or near the date of completion of the defendants' purchase of Fremantle Malls'.

The Eurocurrency selected by the defendants was Swiss francs. It is agreed that the drawing in Swiss francs was made by the defendants on 3 August 1984 and that SwF 2,389,136 was required to purchase A$1.16m.

Clause 3.4 of the loan agreement enabled the defendants to take advantage of the weakening of the Australian dollar against the Eurocurrency in which the loan was denominated by converting to another Eurocurrency by giving the appropriate notice and this could be done from one interest period to another. However, no advantage was taken of this clause and the loan was throughout denominated in Swiss francs. This provision is clearly intended for the purposes of ameliorating the interest payments for each interest period. Clause 4.3 provides that interest shall be paid by the borrowers (defendants) to the bank (plaintiffs) 'in the currency in which the loan is denominated during the interest period then ending'. Nevertheless, in my view, cl 3.4 is also a strong pointer as to which currency the loan is to be repaid as it, inter alia, provides as follows:

... Where the loan is to be converted into another Eurocurrency pursuant to the borrowers' (defendants') request or the operation of this clause, the borrowers (defendants) will repay the loan in its then currency of denomination on the relevant interest payment date, and the bank (plaintiffs) will, subject to such repayment, readvance to the borrowers (defendants) on the same day, by payment to such bank and account in the country of the currency of readvance as the borrowers (defendants) may notify to it, the equivalent amount in that currency of the maximum A$ amount of the facility

Clearly then the loan that was made by the plaintiffs to the defendants under the loan agreement was SwF 2,389,136. There is no dispute on this. In fact, I cannot see how there can be a dispute on this as the 'drawing' before the end of the 'drawing period' was the sum of SwF 2,389,136 with which the defendants purchased the required amount of Australian dollars to complete the purchase of Fremantle Malls. The 'drawing period' is defined in cl 1.1 to mean the period of three months commencing on the date of the loan agreement after which no 'drawing' was permitted (cl 3.1).

Clause 5.1 provides in clear and unequivocal terms that the amount to be repaid, in the manner provided in cl 5.2, is 'the amount of the loan at the end of the 'drawing period''. That amount is SwF 2,389,136. I cannot agree with the defendants' counsel's submission that the loan agreement does not manifestly provide that if the drawdown was in Swiss francs then the repayment of the principal shall be in Swiss francs. That is exactly what the loan agreement does say. This is manifestly clear from the wording of cl 5.2: '... will be in the currency in which the loan is denominated during the interest period ending on the relevant repayment date ...'. Since there was no change in the currency denominated, it is in Swiss francs.

Clause 5.2 further provides the amount of each instalment that is to be paid in these words, omitting the words in brackets since there was no conversion to another Eurocurrency: '... of such amount as will reduce the equivalent amount in Australian dollars of the loan on the repayment date according to the following schedule ...'. Again, in my view, these words are clear and unequivocal. To take an example, the amount of the first instalment that is to be paid is such an amount in Swiss francs as will be necessary at the rate of exchange prevailing on 3 August 1987, that being the repayment date of the first instalment, to reduce the loan to the equivalent of A$1.11m in Swiss francs as at that date, namely 3 August 1987. See the definition of 'equivalent amount'. The same formula is applied for the repayment of the second and third and indeed the final instalment.

Again I cannot agree with the defendants' counsel's submission that the wording of cl 5.2 admits of a construction that the liability of the defendants is to repay the equivalent of A$50,000 in respect of each of the first, second and third instalments and the equivalent of A$1.01m for the final instalment in Swiss francs at the rate of exchange prevailing on the respective repayment dates. If it was intended that the repayment of the loan

was in the manner suggested by the defendants' counsel, it would have been simple enough to state it in those terms rather than to have adopted the particular wording of cl 5.2 which at first, but only at first, appears to be clumsy.

It cannot be gainsaid that one of the purposes for the development of this kind of loan agreement is to enable borrowers to take advantage of the shifts in value of currency on the world's money markets and the wording of the loan agreement, and in particular cl 5, is designed so that the risk of currency loss or gain is always borne by the borrowers (the defendants) and not the lenders (the plaintiffs). This is as it should be because a borrower by entering into such an agreement sets out to speculate on the money market.

I have not accepted the defendants' counsel's submission that ambiguity arises in the construction of cl 5. I have found no such ambiguity. The defendants' counsel was driven to this line of argument in order to raise a triable issue by seeking to investigate what he called 'the facts underlying the transaction' to arrive at the true meaning of cl 5. In particular, he wanted to rely on a letter addressed to the first and fourth defendants and two other intended borrowers dated 25 June 1984 which he termed 'an offer letter', in which a summary of the repayment provision in a draft loan agreement accompanying it read as follows:

> Repayment
>
> In four annual instalments beginning on the third anniversary of the loan drawdown as follows:
>
> First instalment — the equivalent of A$50,000
> Second instalment — the equivalent of A$50,000
> Third instalment — the equivalent of A$50,00
> Fourth instalment — the equivalent of A$1.01m

It is agreed that the repayment provision in the draft agreement is in terms identical with cl 5 of the loan agreement. In my view, the 'offer letter' in no way explained the underlying circumstances of the transaction. I have indicated earlier what, in my view, was the underlying purpose and scheme of the loan agreement. Furthermore the 'offer letter' could not have helped in the construction of cl 5 even if there was an ambiguity. As I have already said I have found no ambiguity in cl 5, the meaning of which is crystal clear.

The plaintiffs' calculation of the principal and interest due under the loan agreement accords with the construction I have placed on cl 5. The figures were not challenged before me nor were they challenged before the senior assistant registrar.

For the reasons I have given, the defendants' appeal against the senior assistant registrar's order for judgment must be dismissed and his order confirmed subject to what I have to say on the plaintiffs' cross-appeal.

The plaintiffs' cross-appeal is against the senior assistant registrar's order made on 28 March 1990 refusing the plaintiffs' claim for interest at the contractual rate on the amount claimed as being due under the loan agreement from the date of the judgment until payment. The senior assistant registrar has not given his reasons for disallowing this claim but I am told by counsel that the senior assistant registrar held that he was bound by O 42 r 12 of the RSC and the decision in *Sim Lim Finance Ltd* v *Pelandok Enterprises Pte Ltd*[1] to award only 8% on the judgment debt from the date of the judgment to payment which is what he did.

By para 9 of the statement of claim, the plaintiffs pleaded cl 11.4 of the loan agreement and claimed:

> in respect of the sum mentioned in (1) above (the principal and interest claimed under the loan agreement) interest from 12 September 1989 to the date of actual payment (as well after as before judgment) at the rate per annum which is 4½% above the rate as determined by the plaintiffs for a deposit of an amount comparable to the said sum offered to the plaintiffs in the Singapore Interbank Market for such period as the plaintiffs may from time to time select.

Clause 11.4 of the loan agreement reads as follows:

> If the borrowers fail to pay any amount in accordance with this agreement, the borrowers shall pay interest in the currency of and on that amount from the time of default up to the time of actual payment (as well after as before judgment) at the rate per annum which is 4½% (four and one half per cent) above the rate (as determined by the bank) for a deposit of an amount comparable to the defaulted amount, offered to the bank in the Singapore Interbank Market, for such period as the bank may from time to time select, at or about 11am (Singapore time) on the business day succeeding that on which the bank becomes aware of the default for value two business days later.

This clause may justly be called 'the default interest payment clause' as opposed to 'the interest payment clause' which is cl 4.2 of the loan agreement and which provides for the payment of interest on the 'drawing', 'the loan' or any part of it for each 'interest period' to be the rate per annum as determined by the plaintiffs to be 2¼% above the rate at which deposits in the currency of denomination of the 'drawing', 'the loan' or such part of it, are offered for the same period as that 'interest period' to the plaintiffs by prime banks in the Singapore Interbank Market at the time and on the day relevant to the 'interest period' in question.

It will be convenient to set out the terms of O 42 r 12 of the RSC as well. It provides that:

> Every judgment debt shall carry interest at the rate of 8 per centum per annum or at such other rate as the Chief Justice may from time to time direct or at such other rate not exceeding the rate aforesaid as the Court directs, such interest to be calculated from the date of judgment until the judgment is satisfied.

The only reported Singapore case which appears to have considered this question is the case of *Sim Lim*

Finance Ltd v *Pelandok Enterprises Pte Ltd*[1] in which Chief Justice Wee Chong Jin reasoned that, upon judgment, the plaintiff was not entitled to interest upon the judgment debt exceeding the statutory rate of 8% prescribed under O 42 r 12. That judgment was a judgment in default of appearance and it appears that the distinction between interest on a judgment debt and an award of the covenanted rate of interest within a judgment was not argued and hence the learned Chief Justice proceeded on the assumption that upon judgment, the covenant was not effective to create a right for contractual rates of interest to continue after judgment.

In *United Overseas Bank Ltd* v *Sin Leong Ironbed and Furniture Manufacturing Co (Pte) Ltd & Ors*,[2] Judicial Commissioner Chan Sek Keong (as he then was) had opportunity to comment on *Sim Lim Finance Ltd* v *Pelandok Enterprises Pte Ltd*.[1] He said at p 481:

> The issue in the *Sim Lim Finance* case ([1981] 1 MLJ 280) was whether the mortgagees were entitled to enter judgment against the mortgagors for the principal sum and interest at the contractual rate (which was higher than the statutory rate). Whether or not they were so entitled depended on whether the personal remedy on the covenant had merged in the judgment which carried interest at the statutory rate, and this was a question of construction of the covenant. If the covenant had been construed as an independent covenant, the mortgagees would have been entitled to sue on the covenant in accordance with its terms and effect: see *Ex p Fewings* ((1883) 25 Ch D 338) ...

In *Popple* v *Sylvester*,[3] Fry J gave judgment on a personal covenant to pay interest which was expressed to continue so long as the security was to continue and the judge held that this meant that the covenanted rate of interest continued after judgment and could be sued upon.

In *Ex p Fewings*,[4] the covenant for interest was not expressed so as to continue after judgment, hence the covenanted rate was not applied after judgment but Fry LJ stated the proposition in these terms (at p 355):

> The first question is simply one of construction. When there is a covenant for the payment of a principal sum,and a judgment has been obtained upon the covenant for that sum, it is plain that the covenant is merged in the judgment, and, if there is a covenant to pay interest which is merely incidental to the covenant to pay the principal debt, that covenant also is merged in a judgment on the covenant to pay the principal debt. Of course a covenant to pay interest may be so expressed as not to merge in a judgment for the principal; for instance, if it was a covenant to pay interest so long as any part of the principal should remain due either on the covenant or on a judgment. In *Re Agriculturist Cattle Insurance Co* (4 Ch D 34, n), the Court of Appeal held that a covenant to pay interest was independent of a judgment for the principal, and that, although the judgment debt only carried 4% interest, the agreement to pay interest at 6% remained in force. So again in *Popple* v *Sylvester* ((1882) 22 Ch D 98), there was an independent covenant for the payment of interest, and I held, as a matter of construction, that that covenant remained in force so long as any principal money could be recovered by the mortgagee in an action for the foreclosure or the redemption of the mortgage.

In *Economic Life Assurance Society* v *Usborne & Ors*,[5] which the learned Chief Justice sought to distinguish in the *Sim Lim Finance* case,[1] the Earl of Halsbury LC endorsed the statement of law by Fry LJ in *Ex p Fewings*[4] I have cited above. He said at pp 149-150:

> My Lords, it seems to me that Fry LJ in the case of *Ex p Fewings* ((1883) 25 Ch D 338, 355), which has been so often referred to, has with great precision and accuracy put the whole point: ... My Lords, if that is accurate, and I believe it to be absolutely accurate and precise, it seems to me that the question is a simple one: it is a question of the construction of this particular deed and the remedy that is now being enforced.

In *Ealing London Borough Council* v *El Isaac & Anor*,[6] Templeman LJ (as he then was) said at p 937:

> I do not for myself understand how a debt payable with interest until actual repayment can be merged in a judgment without interest or with a different rate of interest payable thereafter. ...
>
> Merger does not apply where there is an independent covenant, nor does it apply to a security as distinct from a contract. That appears from *Economic Life Assurance Society* v *Usborne* [1902] AC 147. ...
>
> It appears, therefore, that merger has a very restricted operation. It does not, as appears from the *Usborne* case which I have just cited, apply to a security. It does not apply to what is said to be an independent covenant and in most mortgages and deeds of borrowing these days care is taken to make the covenant an independent covenant.

Clause 11.4 of the loan agreement which I have called 'the default interest payment clause' is on any view of the matter an independent covenant. It is not 'merely incidental' or ancillary to the covenant to repay the principal sum together with interest thereon. It is precisely worded and leaves no doubt that the 'default interest' is payable as a matter of agreement between the plaintiffs and the defendants until 'actual payment (as well after as before judgment)' 'if the borrowers (defendants) fail to pay any amount in accordance with this agreement (the loan agreement)'.

In line with the authorities I have cited above I have come to the conclusion that the plaintiffs are entitled to their claim for post-judgment interest at the contractual rate provided for in cl 11.4 of the loan agreement, that is to say, interest at 4.5% above the Singapore Interbank rate offered to the plaintiffs with half-yearly rests until actual payment. The conclusion I have reached also accords with the current view in Malaysia. See *Malaysia Building Society Bhd* v *Lim Kheng Kim & Ors*.[7]

I am not precluded from making this award by O 42 r 12 of the RSC as, in the first instance, the rule refers to a *judgment debt* and secondly, in my view, the rule cannot have the effect of curtailing contractual rights.

The prescription for O 42 r 12 is to be found in s 80(2)(j) of the Supreme Court of Judicature Act (Cap 322, 1985 Ed) which by the words *'unless it has been otherwise agreed between the parties'* in the proviso is careful not to curtail contractual rights.

Lastly, it was urged on me by the defendants' counsel that to permit the plaintiffs' claim for post-judgment interest would transgress s 9 of the Civil Law Act (Cap 43, 1988 Ed) as that would amount to giving the plaintiffs interest upon interest. I do not agree. The short answer to this is that it is permissable if the capitalizing of interest or the charging of compound interest is contractually provided for. Clause 11.4 of the loan agreement clearly so provides. See *National Bank of Greece SA* v *Pinios Shipping Co No 1 & Anor, The Maira.*[8]

Accordingly, the plaintiffs' cross-appeal succeeds. The order of the senior assistant registrar dated 28 March 1990 and the judgment entered pursuant thereto on 31 March 1990 will be varied to the extent that the sum of SwF 1,744,878.22 will carry interest at the rate of 4½% above the rate as determined by the plaintiffs for a deposit of an amount comparable to the said sum offered to the plaintiffs in the Singapore Interbank Market with half-yearly rests from 28 March 1990 until payment.

The costs of the defendants' appeal will be taxed on a solicitor and client basis and paid to the plaintiffs. There will be no order, as agreed between the parties, on the plaintiffs' cross-appeal.

Defendants' appeal dismissed; plaintiffs' cross-appeal allowed.

Solicitors: *Godwin & Co; Haridass Ho & Partners.*

Reported by *Liu Hern Kuan*

Peh Diana & Anor v Tan Miang Lee

HIGH COURT (SINGAPORE) — SUIT NO 1486 OF 1988
CHAO HICK TIN J
3 JANUARY 1991

Damages (Personal Injury or Death) — Head injury — Brain damage — Intellectual impairment, personality change, facial disfigurement — Damages for pain and suffering, loss of amenities, loss of future support and loss of future earnings — Determination of multiplicand — Use of national average wage

This is an appeal by the defendant against the assessment of the senior assistant registrar with regard to damages for pain and suffering, loss of future earnings and future cost of maid. On 20 February 1988, the first plaintiff (an infant) was travelling as a passenger in motor taxi No SHA 3558M driven by the defendant along the central carriageway of Nicoll Highway in the direction of Guillemard Road, when the said motor taxi went over the road divider onto the wrong side of the said highway and collided with an on-coming motor taxi No SH 7799R. The defendant conceded liability and an interlocutory judgment was entered against him with damages to be assessed. Following a hearing on damages before a senior assistant registrar, it was ordered, inter alia, that the defendant should pay to the first plaintiff a total sum of $691,699.85 as damages, together with interest accruing on $181,163.85 at the rate of 6% pa from the date of the writ, up to the date of the order.

Held, allowing the appeal in part:

(1) A judge's decision on quantum of damages should not be disturbed unless (i) the judge has applied a wrong principle of law or (ii) the amount awarded is either so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.

(2) Considering the precedents, the appropriate compensation payable to the first plaintiff for the head injury and the consequential disabilities that resulted therefrom, and taking into account inflation, should not exceed $70,000.

(3) There is great difficulty in accepting that in the case of a person who has never worked, the national average wage should be used for purposes of working out his loss of future earnings. The amount to be taken in computing loss of future earnings must be that of a young worker and not someone who had worked for some years. In considering loss of future income, the court must have regard to whether the plaintiff would overcome the psychological problems.

(4) On the evidence, it would be wrong to award the first plaintiff a sum as if she would forever be in need of a full-time maid. She did not need a full-time maid even at the time of trial. Therefore, damages would be awarded to obtain a local help just to keep an eye on her and such help should continue for a period of of five years.

[*Editorial Note*: The plaintiffs have appealed to the Court of Appeal vide Civil Appeal No 6 of 1991.]

Cases referred to

1 *Greenfield* v *London and North Eastern Railway Co* [1945] KB 89 (folld)
2 *Nance* v *British Columbia Electric Railway Co Ltd* [1951] AC 601; [1951] 2 All ER 448 (folld)
3 *Tan Joon Heng* v *Thiam Boon Kiap & Anor* [1989] BLD Yearbook 681; BLD [Feb] 209 (distd)